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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 STEVEN L. TILLEY,

11 Plaintiff,

No. CIV S-05-0228 LKK GGH PS

12 vs.

13 PETER WEISER, et al.,

14 Defendants.

ORDER

15 _____/
16 Plaintiff is proceeding in this action pro se. Plaintiff has requested authority
17 pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this
18 court by Local Rule 72-302(c)(21).

19 Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is
20 unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in
21 forma pauperis will be granted. 28 U.S.C. § 1915(a).

22 Determining plaintiff may proceed in forma pauperis does not complete the
23 required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss the case at
24 any time if it determines the allegation of poverty is untrue, or if the action is frivolous or
25 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against
26 an immune defendant.

1 A claim is frivolous if it has no arguable basis in law or fact. Neitzke v. Williams,
2 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984); Jackson
3 v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989).

4 A complaint, or portion thereof, fails to state a claim if it appears beyond doubt
5 there is no set of supporting facts entitling plaintiff to relief. Hishon v. King & Spalding, 467
6 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
7 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
8 this standard, the court must accept as true its allegations, Hospital Bldg. Co. v. Rex Hosp.
9 Trustees, 425 U.S. 738, 740 (1976), construe it in the light most favorable to plaintiff, and
10 resolve all doubts in plaintiff's favor, Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

11 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519,
12 520-21, 92 S. Ct. 594, 595-96 (1972); Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th
13 Cir. 1988). Unless it is clear that no amendment can cure the defects of a complaint, a pro se
14 plaintiff proceeding in forma pauperis is entitled to notice and an opportunity to amend before
15 dismissal. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin, 745 F.2d at 1230.

16 The court cannot determine whether the complaint is frivolous or can be amended
17 to state a claim, because it does not comply with Fed. R. Civ. P. 8. Rule 8 sets forth general rules
18 of pleading for the Federal Courts. Rule 8(a) requires complaints to include: (1) the grounds
19 upon which the court's jurisdiction rests; (2) a short and plain statement of the claim showing
20 entitlement to relief; and (3) a demand for relief. The complaint does not meet the first two of
21 these requirements.

22 The court is unable to determine a jurisdictional basis for this action. A federal
23 court is a court of limited jurisdiction, and may adjudicate only those cases authorized by the
24 Constitution and by Congress. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377, 114
25 S. Ct. 1673, 1675 (1994). U.S. Const. Art. III, § 1 provides that the judicial power of the United
26 States is vested in the Supreme Court, "and in such inferior Courts as the Congress may from

1 time to time ordain and establish.” Congress therefore confers jurisdiction upon federal district
 2 courts, as limited by U.S. Const. Art. III, § 2. See Ankenbrandt v. Richards, 504 U.S. 689, 697-
 3 99, 112 S. Ct. 2206, 2212 (1992). Lack of subject matter jurisdiction may be raised at any time
 4 by either party or by the court. See Attorneys Trust v. Videotape Computer Products, Inc., 93
 5 F.3d 593, 594-95 (9th Cir. 1996).

6 The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332, confer “federal
 7 question” and “diversity” jurisdiction, respectively. Statutes which regulate specific subject
 8 matter may also confer federal jurisdiction. See generally, W.W. Schwarzer, A.W. Tashima & J.
 9 Wagstaffe, Federal Civil Procedure Before Trial § 2:5. Unless a complaint presents a plausible
 10 assertion of a substantial federal right, a federal court does not have jurisdiction. See Bell v.
 11 Hood, 327 U.S. 678, 682, 66 S. Ct. 773, 776 (1945). A federal claim which is so insubstantial as
 12 to be patently without merit cannot serve as the basis for federal jurisdiction. See Hagans v.
 13 Lavine, 415 U.S. 528, 587-38, 94 S. Ct. 1372, 1379-80 (1974).

14 The complaint alleges “violations of Federal Law or Federal Statutes” arising
 15 from “the release of private and Federally protected information released by the VA Sierra
 16 Nevada Health Care System.” Plaintiff alleges that the “Federally Protected Materials were
 17 mishandled and misused to wit: The unauthorized transfer of the documents, unauthorized
 18 publication of the documents and arbitrary judgment using the documents as a basis.” Based on
 19 his complaint, it appears plaintiff contests the use of his medical records for use in a California
 20 juvenile dependency proceeding. That proceeding resulted in an order adjudicating plaintiff’s
 21 stepchildren dependents of the court.¹

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24 ¹ The undersigned notes that plaintiff’s ex-spouse, Kathy Tilley, has filed at least two
 25 complaints with this court seeking review of these dependency proceedings. Portions of this
 26 complaint appear to be a reprise of the allegations made in those cases, both of which were
 dismissed by this court. See Tilley v. Superior Court of the State of California, Case No. 2:01-
 cv-2277 and Tilley v. Superior Court of the State of California, Case No. 2:05-cv-0636.

1 Here, plaintiff alleges, among other things, that: (1) the Department of Veterans
2 Affairs improperly handled the request for release of his medical records since the records they
3 released came from his physician Peter Weiser's "private files" rather than from the agency's
4 "medical files"; (2) representatives of the court in California required his wife (Kathy Tilley) to
5 divorce him; (3) the unlawful disclosure of his medical records wrongfully made him "subject to
6 California law" in violation of the Fourteenth Amendment; (4) "Anthony Urquiza" wrongfully
7 reported plaintiff as a "felon child molester" in California; (5) the Sacramento County
8 Department of Health and Human Services and its agents wrongfully used plaintiff's medical
9 records; (6) Judge Charles Kobiashi wrongfully used plaintiff's medical records and related
10 reports in ordering plaintiff's stepchildren dependents of the court; and, (7) that Attorney Peter
11 Helfer also violated various laws in using plaintiff's medical records.

12 Apart from citing various constitutional amendments, the only federal laws
13 plaintiff cites are "5 U.S.C. § 552", "38 U.S.C. 5101§1.576a" and "VBA Publication 1605.1."

14 The court assumes plaintiff's citation to 5 U.S.C. § 552 is intended as a citation to
15 5 U.S.C. § 552a, which contains conditions of disclosure for documents maintained by a
16 government agency. See 5 U.S.C. § 552a. That statute does not contain a broad prohibition on
17 disclosure of agency records, and in fact provides several circumstances in which disclosure is
18 permitted, including disclosures "to an instrumentality of any governmental jurisdiction within ...
19 the United States" or "pursuant to the order of a court of competent jurisdiction." Both of these
20 circumstances appear to apply to the scenario explained in the complaint, i.e., juvenile
21 dependency proceedings concerning plaintiff's stepchildren. To the extent plaintiff means to
22 refer to 5 U.S.C. § 552, this statute is general in nature and sets forth requirements for federal
23 agencies concerning their rules, opinions, records and proceedings.

24 Plaintiff's citation to "VBA Publication 1605.1" and alternatively to "VHA
25 Publication 1605.1" appears to be a reference to a Veterans' Affairs handbook. Plaintiff fails to
26 explain any legal weight or authority this document may have, and does not explain how it might

1 provide a basis for this court's jurisdiction or establish a federal cause of action.

2 The court assumes plaintiff's citation to "38 U.S.C. 5101 § 1.576a" is in fact a
3 citation to 38 U.S.C. § 5701. This statute is more relevant to plaintiff's allegations insofar as it
4 establishes the confidential nature of Veterans' Benefits claims. See 38 U.S.C. § 5701.
5 However, this statute does not establish a cause of action for the wrongful release of a veteran's
6 medical records. In fact, the statute states in relevant part, that the "Secretary shall make
7 disclosure of such files, records, reports, and other papers and documents . . . in any suit or other
8 judicial proceeding when in the judgment of the Secretary such disclosure is deemed necessary
9 and proper." 38 U.S.C. § 5701(b)(5).

10 None of the allegations or legal citations in the complaint provide a basis for this
11 court's jurisdiction, nor do they appear to establish a federal cause of action. It is plaintiff's
12 obligation to state the basis of the court's jurisdiction in the complaint, and plaintiff has not done
13 so.

14 The requirement of a short and plain statement means a complaint must include
15 "sufficient allegations to put defendants fairly on notice of the claims against them." McKeever
16 v. Block, 932 F.2d 795, 798 (9th Cir. 1991). Again, the complaint contains only broad
17 allegations against myriad defendants, and does not contain allegations specific enough to put
18 defendants on notice of any claims against them. See Conley v. Gibson, 355 U.S. 41, 47, 78 S.
19 Ct. 99, 102 (1957); Richmond v. Nationwide Cassel L.P., 52 F.3d 640, 645 (7th Cir. 1995)
20 (vague and scanty allegations fail to satisfy the notice requirement of Rule 8); 5 C. Wright & A.
21 Miller, Federal Practice and Procedure § 1202 (2d ed. 1990).

22 Because the complaint fails to articulate grounds upon which the court's
23 jurisdiction rests and a short and plain statement of the claim showing entitlement to relief,
24 plaintiff will be permitted to file an amended complaint in order to cure these deficiencies.

25 Plaintiff is informed the court cannot refer to prior pleadings in order to make an
26 amended complaint complete. Local Rule 15-220 requires that an amended complaint be

1 complete in itself. This is because, as a general rule, an amended complaint supersedes the
2 original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Accordingly, once
3 plaintiff files an amended complaint, the original no longer serves any function in the case.
4 Therefore, “a plaintiff waives all causes of action alleged in the original complaint which are not
5 alleged in the amended complaint,” London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th
6 Cir.1981), and defendants not named in an amended complaint are no longer defendants. Ferdik
7 v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).

8 Accordingly, IT IS ORDERED that:

- 9 1. Plaintiff’s request to proceed in forma pauperis is granted;
- 10 2. The complaint is dismissed, with leave to file an amended complaint within
11 thirty days of this order. Failure to file an amended complaint will result in a recommendation
12 that the action be dismissed. PLAINTIFF IS ADVISED THAT ANY FUTURE FILINGS
13 SHOULD REFER TO THE CIVIL CASE NUMBER ON PAGE ONE OF THIS ORDER.

14 DATED: 11/22/05

/s/ Gregory G. Hollows

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GREGORY G. HOLLOWES
UNITED STATES MAGISTRATE JUDGE

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